

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY

ALLEGED FAILURE TO COMPLY WITH
COMMISSION REGULATIONS

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) CASE NO. 93-059
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O R D E R

After receiving an Electrical Utility Accident Investigation Report prepared by Commission Staff which alleged the Kentucky Utilities Company ("KU") had failed to comply with Commission Regulations 807 KAR 5:006, Section 26, and 807 KAR 5:041, Section 3, the Commission ordered the utility to show cause why it should not be penalized for its alleged failures.

KU has responded to the Electrical Utility Accident Investigation Report, stipulated the facts in this matter, submitted a written brief, and waived its right to any evidentiary hearing.

After reviewing the evidence of record and being otherwise sufficiently advised, the Commission finds:

1. KU is a Kentucky corporation which owns and operates facilities used in the distribution of electricity to the public for compensation for light, heat, power and other uses.

2. On December 16, 1988, the Commission issued a list of Commission personnel designated to receive reports of utility-

related accidents to all jurisdictional electric and telecommunications utilities.

3. On January 22, 1991, the Commission issued a new list of designated Commission personnel which superseded the previous December 16, 1988 list.

4. On both lists the Commission designated Claude Rhorer, Director of the Commission's Division of Engineering, as the secondary contact person and instructed all utilities to contact Mr. Rhorer if primary contact persons were unavailable.

5. At approximately 6:30 p.m., Central Daylight Time, on July 25, 1992, while climbing a tree in the backyard of his home, Chad Marvel came into contact with a 2400 volt single phase ungrounded electric conductor located in Wheatcroft, Kentucky and suffered burns to his hands and legs which required medical treatment at the Regional Medical Center at Madisonville, Kentucky.

6. KU owns the facility in question and uses it to provide electric service to the public.

7. At approximately 9:30 p.m., Central Daylight Time, on Saturday, July 25, 1992, KU District Superintendent Charles Reynolds was informed of the incident and contacted KU's Lexington Operations Center Dispatcher Ronnie Dolen. Mr. Dolen was unable to contact any of the KU personnel who are assigned to inform the Commission of such incidents.

8. On July 25, 1992, at 9:50 p.m., Central Daylight Time, Mr. Dolen repeatedly attempted to contact by telephone Commission

personnel designated to receive incident reports during after-business hours.

9. On July 26, 1992, KU claims representative Brian Dickey unsuccessfully attempted to notify designated Commission personnel.

10. In their efforts to contact the Commission, KU personnel used the December 16, 1988 list of designated personnel.

11. At the time of the incident, the December 16, 1988 list was no longer current. One of the listed individuals was no longer employed with the Commission. Another listed individual had moved and his listed telephone number was no longer correct. Moreover, two listed individuals were out of town and thus unavailable to receive any accident notification.

12. KU made no attempt on July 25-26, 1992, to contact Mr. Rhorer, director of the Commission's Engineering Division, to report the incident. Mr. Rhorer's name and correct telephone number appear on both the December 16, 1988 and January 22, 1991 lists.

13. KU reported the incident to the Commission on Monday, July 27, 1992, at 8:35 a.m., Eastern Daylight Time.

14. Commission Regulation 807 KAR 5:006, Section 26(1) requires an electric utility to notify the Commission within two hours of any utility-related accident which results in burns requiring treatment at a medical facility.

15. KU failed to notify the Commission within two hours of a utility-related accident which resulted in burns requiring treatment at a medical facility.

16. Any utility which willfully violates any Commission regulation is subject to civil penalty. KRS 278.990(1). A willful violation may involve "a 'knowing' violation or 'knowing failure to comply.'" Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App. 1962). It may also include conduct which reflects an "indifference to . . . [its] natural consequences." Huddleston v. Hughes, Ky. App., 843 S.W.2d 901, 905 (1992).

17. KU willfully violated Commission Regulation 807 KAR 5:006, Section 26(1), and should be assessed a penalty of \$100 for its willful violation.

18. At the time of the incident, the electric conductor in question ran through the limbs of a tree on the Marvel property.

19. On July 28, 1992, these limbs were in close distance to the conductor and would make contact with it if any movement occurred.

20. The conductor was not separated from the tree limbs by any suitable material or device.

21. Prior to the incident, KU last inspected and trimmed trees in the incident area in January 1991.

22. Dwight Marvel, Chad Marvel's father, contacted KU in early 1992 and inquired about trimming the tree in question. KU is unable to verify the reason for this request. KU records do not indicate that Mr. Marvel expressed any safety concerns as the reason for his request nor do they indicate that KU inquired about the reasons for Mr. Marvel's request. KU added Mr. Marvel's name to a list of customers requesting tree trimming.

23. Prior to the incident, KU had scheduled tree trimming in the general area of the Marvel residence for August 17, 1992 as part of KU's routine line clearance practices.

24. National Electrical Safety Code (NESC) Section 218A1 provides that "[t]rees which may interfere with ungrounded supply conductors should be trimmed or removed. NESC Section 218A2 provides that "[w]here trimming or removal is not practical, the conductor should be separated from the tree with suitable materials or devices to avoid conductor damage by abrasion and grounding of the circuit through the tree."

25. Notwithstanding KU's arguments to the contrary, the purpose of NESC Section 218A is not solely the prevention of conductor damage. This section's principle purpose is the "safety of employees and the public." NESC Section 010.

26. NESC Section 218A does not provide specific clearance standards to establish appropriate tree trimming practices. It is flexible to allow for local conditions, including varying vegetation growth rates and right-of-way clearing schedules.

27. The evidence of record fails to show that KU willfully violated NESC Section 218A or Commission Regulation 807 KAR 5:041, Section 3.

28. Where electric utility customers request that the utility trim trees around electric distribution lines, the utility should inquire to determine the reasons for the request, more specifically, whether safety considerations require immediate action. A utility's failure to do so may constitute an unsafe and

unreasonable service practice. Where such practices are found, the Commission, pursuant to KRS 278.260, will initiate proceedings to investigate such practices and, where appropriate, order their correction.

IT IS THEREFORE ORDERED that:

1. KU is assessed a penalty of \$100 for its willful violation of 807 KAR 5:006, Section 24.

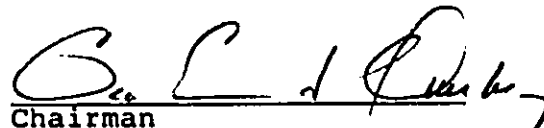
2. KU shall pay the assessed penalty within 20 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky," and shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

3. Within 30 days of the date of this Order, KU shall advise the Commission in writing of its procedures and practices for handling requests for tree trimming services.

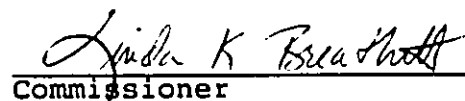
4. This case is closed and shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 18th day of April, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director